

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

Oct. 2, 1986 (12)

Spencer

1252

JOSEPH PENNY & HELENE PENNY,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

Tax Docket No. 3694-85

Filed

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came before the Court for trial on September 8, 1986. Based on the record of the case and the evidence adduced at trial, the Court makes the following findings of fact:

Findings of Fact

1. Petitioners Joseph and Helene Penny are individuals with a residence at 1618 Myrtle Street, N.W. in Washington, D.C. They are owners of the subject property, lot 876 in square 1244, located at 1404 Wisconsin Avenue, N.W. in Washington, D.C. and are legally obligated to pay all real estate property taxes assessed against the site.

2. The amount in controversy, \$1,169.84, was exacted by the District of Columbia pursuant to D.C. Code §47-821(d)(1) (1985 Supp.) and 9 D.C.M.R. §330 et seq., for petitioners' late filing of their Income and Expense Form for tax year 1983. The Department's regulations require filing of the Income and Expense Form by April 1 of each year. The amount includes a 10% penalty, which becomes part of the tax, plus interest and penalty for late payment.

3. Petitioners were notified of the exaction of \$1026.17 for late filing of their 1983 Income and Expense Form on their 1985 first-half

tax bill, sent out August 15, 1984. Petitioners paid the tax of \$5,130.83 by way of check by the due date of September 15, 1984 but neglected to pay the penalty, which had, by statute, become a part of the tax. This delinquency was paid December 31, 1984. Petitioners were notified of a late penalty and interest charge on their account by way of their second-half tax bill, sent out February 15, 1985. That amount was paid, along with the underlying tax for the second-half, by check of March 20, 1985.

4. The undisputed evidence at trial showed that the Income and Expense Form was contained in an envelope postmarked by the United States Post Office on April 16, 1984. It was received by the Department April 20, 1984.

5. This Court finds that the Real Property Assessment Division is responsible for discovery, identification, description, classification and valuation of all real property in the District for tax purposes.

6. The Real Property Assessment Division is also responsible for collecting and recording the receipt of all Income and Expense Forms by the Department. Sandra Dillard, an employee of the Real Property Assessment Division at all times material to this litigation, testified that she was responsible for the receipt of all Income and Expense Forms by the Division and for the stamping and recording of receipt of those Forms.

7. With respect to the Income and Expense Form of petitioners for 1404 Wisconsin Avenue, N.W., undisputed testimony by Ms. Dillard showed that she, following regular Department procedure, stapled the envelope containing petitioners' Income and Expense Form to the Form on receipt of the Form, coded the Form with a pink mark indicating it was late-filed and date-stamped the Form on receipt with the date of receipt: April 20, 1984. Ms. Dillard testified convincingly that the procedure of stapling the envelope and the Form together was followed because

of the importance of clear and accurate records as to time of receipt. Ms. Dillard testified that the envelope bore a United States postal mark of April 16, 1984. There was no evidence adduced at trial that the copy of the envelope Ms. Dillard identified at trial was not a true copy of the envelope in which the Income and Expense Form was mailed by petitioner and received by the Department. It bore the printed name and address of petitioners' attorney Sol J. Pokrass.

8. Ms. Dillard identified the Department's log of receipt of Income and Expense Forms for all commercial properties in the District of Columbia. The entry for petitioners' property at 1404 Wisconsin Avenue was color-coded pink, indicating the Form was filed late.

9. Ms. Dillard's undisputed testimony established that petitioners never requested an extension for late-filing of their Income and Expense Form.

10. Petitioners offered no evidence at trial that they were under any legal disability at the time due for filing the Income and Expense Form.

11. Petitioners offered no evidence at trial that their attorney was under any legal disability at the time due for filing the Income and Expense Form.

12. Petitioners offered no mailing logs at trial indicating the mailing of the Income and Expense Form to respondent by their attorney.

13. Petitioners were unable at trial to corroborate in any way their bare assertion that the Form was timely mailed. Petitioners' only witness as to the actual mailing of the Form was their own attorney, Sol Pokrass, who has represented them for six years. Mr. Pokrass admitted on the stand that if the Court were to find the Form were filed late, as between him and his clients, he would be the responsible party. Petitioners' only other witness, Eileen Gross, could offer testimony solely with respect to the preparation of the Form prior to mailing.

14. Doris Brown, employed by the Department of Finance and Revenue, Assessment Services Division for 15 years, testified that petitioners sought administrative review by letter to the Department dated August 22, 1984. That request was denied by Ms. Brown as representative of the Department by administrative action of September 25, 1984 on the basis of the April 16th postmark. Ms. Brown's undisputed testimony established that petitioners submitted no corroborative evidence of their claim that the Form was mailed in a timely manner.

15. Ms. Brown testified that petitioners sought reconsideration by letter of October 5, 1984, which was denied by administrative action of October 22, 1984 on the basis of the April 16, 1984 postmark. Ms. Brown testified convincingly that petitioners submitted no corroborative evidence of their claim that the Form was mailed in a timely manner.

16. Petitioners timely filed their petition in this Court.

Based upon the above findings of fact, the Court makes the following conclusions of law:

Conclusions of Law

1. Section 47-821(d)(1) (1985 Supp.) imposes a duty on property owners and notices them that failure to perform that duty will trigger the exaction of a penalty of 10% of the real property tax due on that property:

(d)(1) The Mayor may require an owner of real property to submit such information relating to the income and economic benefits derived from such property as in the Mayor's judgment will assist in the determination of the estimated market value required under this title. If an owner of real property in the District of Columbia fails to submit such information within the time and in the form prescribed, there shall be added to the real property tax levied upon the property in question for the next ensuing year the amount of 10 per centum of said tax: Provided, that when such information is provided after said time and it is shown that the failure to provide it was due to reasonable cause, no such addition shall be made to the tax.

The penalty will be excused only if the owner can demonstrate that its failure to provide the information was due to "reasonable cause." The section mandates submittal "within the time and in the form prescribed." Regulations construing the statute have been adopted stating the time and form prescribed and elucidating a standard for reasonable cause.

The regulations require property owners to deliver their completed form to the Department of Finance and Revenue by April 1 to avoid the penalty. 9 D.C.M.R. §330.6. The regulations further state that delivery to the Department includes a timely postmark. 9 D.C.M.R. §330.7 and §330.12:

Any information form or documents required by §§330-339 to be submitted (postmarked) by a specific time may be hand delivered (in lieu of mailing) to the Department at the Office of Real Property Taxes, Room 2132, 300 Indiana Avenue, N.W., Washington, D.C. on or before the close of business (4:45) on the specified date.

Accordingly, unless the form is hand-delivered, the postmark will determine the time of filing.

This Court concludes that petitioners did not comply with the statute. The Department did not receive the Income and Expense Form until April 20. The Form was mailed on April 16. Petitioners were notified in writing of their noncompliance, as required by regulation by way of their first-half and second-half real property tax bills. 9 D.C.M.R. §§330.10 and 330.11.

2. This Court concludes that petitioners have alleged no reasonable cause for having violated the statute. The regulations lawfully passed by the Department of Finance and Revenue set a standard for what constitutes reasonable cause. 9 D.C.M.R. §331.2:

For purposes of §331.1, the phrase "reasonable cause" shall be construed to mean the following:

- (a) Those situations in which the owner of the affected property is under a legal disability at the time due for filing. Persons under a legal disability are those persons who, at the time due for submission of the forms, did not appreciate their obligation to file and were thus unable to care for their property by reason of advanced age, mental illness, mental defect or physical incapacity;
- (b) Death of the record-owner of the affected property within six (6) months prior to the date due for submission of the forms;
- (c) Death of the agent who is retained by the taxpayer to prepare the forms, within six (6) months prior to the date due for submission of the forms; and
- (d) Any other situation which the Department in its discretion considers appropriate for the treatment.

Petitioners have admitted that neither they nor their attorney was under a legal disability at the time set for filing of the Form.

3. Petitioners have presented no persuasive evidence that the Income and Expense Form was mailed before April 16, 1984. Although petitioners' defense for late filing appears to be that the United States Post Office erred in not immediately postmarking the envelope, petitioners have failed in their burden of proving that the United States mails were at fault. The Department was following its own statute and regulations in assessing the 10% penalty. See 9 D.C.M.R. §331.2. The postmark controls and there has been no probative evidence that the U.S. Post Office erred. 9 D.C.M.R. §330.8:

Unless the postmark is illegible, no proof of a different postmark will be accepted other than a registered or certified mail receipt or an affidavit from the proper postal representative. If the postmark is illegible, and affected taxpayer must submit a duly notarized affidavit which indicates a timely postmark.

Additionally, the date of postmark almost invariably reflects the day of mailing or a few hours thereafter. Minnick v. State Farm Mutual Automobile Insurance Co., 174 A.2d 706 (Del. Super Ct. 1961); see also In re Powell's Estate, 63 Nev. 19, 158 P.2d 545 (1945) (postmark tends to show letter was not put in mail until day shown in postmark and will control over the affidavit of counsel as to the time of mailing); Hurley Bros. v. Haluptzok, 269, 171 N.W. 928 (1919); Abbott Construction Co. v. Hartsfield, 237 Ga. 247, 227 S.E. 2d 254 (1976) (in deciding the contested date of mailing, the United States Post Office postmark controlled over both a private postage meter postmark and an affidavit of appellant's attorney indicating an earlier mailing date). All cited with approval in Wagshal v. District of Columbia, 430 A.2d 524 (D.C. App. 1981).

In Wagshal, the D.C. Court of Appeals upheld a dismissal on jurisdictional grounds of a petition for review when the petitioner failed to pay all taxes before filing of the petition. Appellant had mailed its tax payment in an envelope bearing a private meter mark of March 30.

This Court can and does take judicial notice of the "fixed methods and systematic operation of the United States postal service". Kolker v. Biggs, 99 A.2d 743 (Md. Ct. App. 1983). Furthermore, the April 20 date of receipt by the Department of Finance and Revenue buttresses an April 16 mailing date rather than a March 23 mailing date.

Petitioners have been unable to rebut this presumption of regularity by any established course of business of their own or their attorney's "sufficiently fixed under the circumstances to be of probative value." Kolker at 747. Accordingly, this Court must agree with the Wagshal Court:

We find it inconceivable that appellant's letter could have been deposited on March 30th and remain uncollected until the afternoon of April 1st in light of the Postal Service's schedule of regular daily mail collections. Appellant has provided no reason to think otherwise.

Wagshal v. District of Columbia, 430 A.2d 524, 526 n. 5 (1981).

Petitioner has presented this Court with no caselaw to rebut that cited by respondent and no specific evidence to overcome the postmark. Accordingly, this Court concludes as a matter of law that petitioners' Income and Expense Form was late-filed without reasonable cause.

4. A finding of willfulness is not required for liability under the District's taxing statute:

The Council's intent is illustrated in the legislative history. Under Title VI of the [District of Columbia Revenue Act of 1983,] Real Property [Tax Revision] the Council states:

Under current District law owners of real property must file an annual income and expense statement on the property with the Department of Finance and Revenue. This income and expense statement is used to determine the assessed value of the property.

This provision involves two different standards of proof which make it difficult to enforce the penalty. Under the "reasonable cause" standard the District Government simply needs to prove that the taxpayer has not acted with ordinary business care and prudence. Under the "willful neglect" standard, the District has to prove that the failure to file was intentional, knowing and voluntary.

This title resolves the problem by deleting the "not due to willful neglect" standard. Therefore, the burden of proof is less since the only standard is "reasonable cause" thereby making it easier to impose the penalty. The additional revenue will be used as a funding source for the 1984 budget. Report of the Commission of Finance and Revenue on Bill 5-74, District of Columbia Revenue Act of 1983 (March 3, 1983).

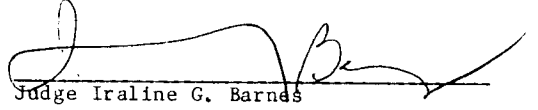
The Court concurs with the District's analysis of the statute pursuant to its legislative history. The Committee Report specifically demonstrates that late filing is to be penalized. Paragraph two of the report states: This failure to file is excused if information is later provided and if it can be shown that failure to file was due to "reasonable cause."

1055 Thomas Jefferson Associates v. District of Columbia, Tax Docket No. 3683-85 (April 8, 1986) Opinion at 4.

5. Ms. Brown testified that the Department of Finance and Revenue assessed penalty and statutory interest against petitioners for their late filing of the Income and Expense Form. The statute clearly sets out that the penalty for late-filing of the Form becomes part of the tax.

\$47-821(d)(1) ("there shall be added to the real property tax levied upon the property . . . 10 per centum of said tax"). The initial exaction of \$1026.17 for late-filing of the Income and Expense Form and the subsequent exaction of \$143.67 for failure to satisfy the first-half tax bill were statutorily mandated and the Department was following its own procedures and regulations in assessing such amounts.

Date:

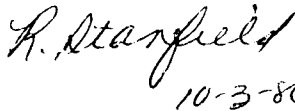

Judge Iraline G. Barnes

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